IN THE

Supreme Court of the United States

No. .....

ORIN C. CLEMENT,

Petitioner,

vs.

TIGHE E. WOODS, HOUSING EXPEDITER,
OFFICE OF HOUSING EXPEDITER,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

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To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

Petitioner, Orin C. Clement, prays and respectfully petitions this Honorable Court that a writ of *certiorari* issue to review the decree and order of the United States Court of Appeals for the Sixth Circuit, rendered and entered on October 16, 1951, after a hearing on October 12, 1951, affirming the final order and judgment of the District Court of the United States, for the Northern District of Ohio, Western Division, entered May 29, 1950.

No opinion was rendered by the Court of Appeals for the Sixth Circuit. The order of affirmance is contained in Appendix A.

Within twenty days under rule from the order of affirmance, within petitioner (appellant) on November 5, 1951, filed his petition for a rehearing. The petition for rehearing was denied by an order entered November 19, 1951. Appellant's application for stay of mandate, filed November 24, 1951, was granted November 28, 1951, for thirty days, pending the filing of a petition in this Court for a writ of *certiorari* to the United States Court of Appeals for the Sixth Circuit, which time for filing this petition was by order of December 26, 1951, extended to and including January 12, 1952.

JURISDICTION OF THIS COURT

Jurisdiction of this Court is invoked under 28 U. S. C., Section 1254(1).

The questions here presented for the consideration of this Honorable Court disclose that the United States Court of Appeals for the Sixth Circuit has rendered a decision probably in conflict with another Circuit Court of Appeals on the same matter, and in conflict with a decision adverse to respondent (appellee) on the same matter in the Sixth Circuit which is final upon appellee (respondent) failing to appeal; has decided an important question of local law in a way probably in conflict with applicable local decisions; has decided an important question of federal law which has not been, but should be, settled by this Court; has decided a federal question probably in conflict with applicable decisions of this Court; and has so far departed from the usual course of judicial proceedings, or so far sanctioned such departure by a lower court, as to call for the exercise of this Court's power of supervision; and that this Court does have jurisdiction to hear and to determine the substantial federal questions here presented. U. S. Supreme Court Rule 38(5b).

Controlled Housing Rent Regulations, Sec. 825.8, 13 F. R. 5706, promulgated pursuant to the Housing and Rent Act of 1947, as amended in 1948, provides that maximum rents and other provisions thereof, shall not be evaded, directly or indirectly, in any of the several ways specified therein. Sec. 825.8 is contained in Appendix B.

This action, as pertains to certain contracts, is predicated on Sec. 825.8 of the Regulations (1st R. p. 54). Under the Housing and Rent Act of 1947, as amended in 1948, and under Sec. 825.8 of the Regulations, the question of whether or not contracts, in conformity with local law, for the sale and purchase of individual housing units in an apartment building in the full possession of the owner, constitutes evasion, presents federal questions as to the scope and extent of authority created by Sec. 825.8, as pertains to contracts for the sale of individual apartment units, and the question of jurisdiction over the contracts and the subject matter, since they set up a relationship entirely different from that of landlord and tenant. As well, are federal questions in their relation to and bearing on controlling local law pertaining to such contracts, and, as impressing an illegal restraint on the unalienable right of alienation of property in accordance with provisions of local law, contrary to constitutional inhibitions.

These are basic and fundamental questions of serious concern and great importance to the owners of property, which, under applicable law, normally are purely local matters and of local concern.

This decision raises grave questions of more than local interest. The effect of the decision reaches every community in the nation with a rule of limitation on local law and private rights of a local nature, by a mere regulation of a government agency, effectually imposing a restraint on the disposition of property by contract legal by local law.

There is presented the further question of whether, by its order of affirmance, the United States Court of Appeals for the Sixth Circuit has not departed from the accepted and usual course of judicial procedure, and sanctioned such departure by the lower court, in grounding a judgment of evasion on findings of and inferences from immaterial and irrelevant facts, when there is no dispute on material evidentiary facts, and there is involved only the legal determination of a fully integrated contract unassailed for fraud, accident or mistake, and refusing to ground the judgment on contract provisions in accordance with well settled rules of law and procedure, and, at the same time, affirming the judgment, without opinion, while refusing to consider the assignments of error.

This is a vital and serious departure especially when made in the face of a decision in the Sixth Circuit on the same matter concluding the respondent, by his failing to appeal from the decision. It decides a cause on issues of immaterial and irrelevant facts, unlawfully injected into the cause outside of, and not made by the pleadings, and, by an indirect and unlawful means, takes jurisdiction of the subject matter not within the scope of the powers granted, resulting in a judgment unwarranted in law, with the question of evasion not being adjudged.

The decision is in conflict with *Woods vs. Malcolm-Dollyn*, 177 F. 2d 414, (C. C. A. 8); with the unreported case of *Woods vs. Alexander*, civil action No. 5192 in the District Court for the Western District of Missouri, Western Division, (C. C. A. 8), where four apartments, sold by contracts, and occupied thereunder, were left unmolested even though the contracts contained a provision for re-renting in case of default under the contracts; and the unreported case of *United States vs. Donald B. Neal et al*, civil action No. 8539 in the United

States District Court for the Eastern District of Michigan, Southern Division, wherein the respondent was plaintiff and by failing to appeal from a summary judgment of dismissal granted on the same grounds interposed by this petitioner in his defense, established by respondent's consent, the rule controlling this cause. Appendix C contains the pleadings, the motion to dismiss and the order of dismissal.

The judgment and order of the United States Court of Appeals for the Sixth Circuit, which is sought by this petition to be reviewed, is dated October 16, 1951, and this petition for review is presented January 12, 1952.

SUMMARY STATEMENT OF THE MATTERS INVOLVED

This is the second petition to this Court in this cause for a writ of *certiorari* to the United States Court of Appeals for the Sixth Circuit, the first petition, No. 525, October Term, 1949, in this Court, having been for review of the order of the Court of Appeals affirming the interlocutory order of the lower court (1st R. p. 79) on the authority of *Alabama vs. United States*, 279 U. S. 229. The first petition for writ of *certiorari* was denied (339 U. S. 911).

On the appeal from the final order of the lower court, this cause was docketed in the United States Court of Appeals for the Sixth Circuit on November 9, 1950. On April 27, 1951, motion was filed to advance the cause for hearing at the June Session of the Court. That motion was denied by an order entered May 16, 1951, and the cause advanced for hearing at the October Session, 1951, and hearing had on October 12, 1951.

On the trial on the merits in this cause, No. 6083 in the United States District Court for the Northern District of

Ohio, Western Division, the respondent stood on the record of the proceedings on the hearing of the application for the preliminary injunction, and introduced no additional testimony. A complete record of the proceedings on the trial on the merits was filed in the Appellate Court which did not include the record of the first appeal from the interlocutory order, but permission was given to use, as a part of the record, the record on the first appeal.

Concurrently with the filing of this petition and the record on the appeal from the final order, petitioner is presenting a motion for permission to use as a part of the record with this petition, the record filed with the first petition for a writ of *certiorari* in No. 525, October Term, 1949. Matters contained in the record in No. 525 will be referred to herein as 1st R. and in the record with this petition, as 2d R.

The essential facts and claims of the respective parties are contained in the complaint and the answer, together with the affidavits filed by the parties. (1st R. p. 1-15)

Petitioner is the owner of an 8 unit apartment building located at the corner of Fulton and Columbia Streets in Toledo, Ohio. Four units enter at the Columbia Street entrance and three at the Fulton Street entrance, and one at the side of the building opposite Fulton Street. (1st R. p. 13, 81.) When rented, these are controlled housing accommodations. During the spring and summer of 1948, 3 apartments (numbers 6, 7 and 8) became vacant and were allowed to remain vacant and were not thereafter rented. (1st R., p. 13.) Apartments numbers 1, 2, 3, 4 and 5 were occupied by rent-paying tenants. At that time and for some time prior thereto, petitioner had been making efforts to secure rent adjustments to meet increased operating costs (1st R. p. 14). When these efforts were to no avail he, on August 6, 1948, gave notices to the five tenants

in the building that he was withdrawing the apartments from the rental market, and requested possession at the end of the sixty days. (1st R. p. 14.) At irregular intervals, the five tenants receiving notices vacated and surrendered possession of the apartments they occupied (1st R. p. 13). Petitioner was then in possession of all the units of the building, and after, and as he redecorated and reconditioned each apartment he offered it on the market for sale by contract, on a cooperative or joint ownership plan. This offer was made by a sign on the building, stating the terms and that it could be handled by contract. As each unit was redecorated and ready for occupancy, an advertisement was inserted in the local newspaper reading, "4 rooms, bath, can be handled by land contract, $60 monthly, adults, open 5 to 7 p. m., 2247 Fulton Street." People who were looking for apartments were called by telephone and the plan explained to them if they were interested. On March 25, 1949, when the complaint herein was filed, petitioner had contracted for the sale of 6 units, 3 apartments (1, 3 and 5) vacated and possession surrendered by tenants receiving notices, and 3 (apartments 6, 7 and 8) which petitioner had refused to rent over several months. The contract is set out in full in the opinion of the lower court (1st R. p. 55).

Apt. No. 1 was sold by contract to Kenneth L. Cann.

Apt. No. 3 was sold by contract to Andrew Rometski, who later transferred to Apt. No. 5, and Apt. No. 3 was then sold to Bruce J. Rommel.

Apt. No. 5 was sold to Andrew Rometski as above stated.

Apt. No. 6 was sold to George Sfaelos.

Apt. No. 7 was sold to John Allen Coxon.

Apt. No. 8 was sold to John Duffy.

All of the vendees entered into possession of their respective units under and by virtue of the contracts and

after the contracts had been executed, signed, and delivered. None of them ever before lived in or occupied any apartment in the building.

Named in the complaint, Schedule A (1st R. p. 5) besides the six contract vendees, are Mrs. Margaret Young and Mrs. Jessie S. Eastell, who were former tenants, and not contract vendees. The claims respecting them are small. They cannot be substantiated in equity because a part of the alleged overcharge was collected as rent increases allowed by respondent's letter of September 23, 1947, (Exhibit A, 2d R. p. 99), which increase, respondent's office told some tenants not to pay, but said nothing to petitioner until a notice of December 12, 1947, denying the petition on which the increase was granted (2d R. p. 74). The balance of the alleged overcharge was on apartment No. 3, which was identical in all respects, and at the same entrance with apartments 1, 2, and 4, all of which rented for the same amount of 45 dollars monthly. No overcharge was claimed or existed on apartment No. 2 which had rented for 45 dollars before rent controls became effective (2d R. p. 76, 78), and in an earlier action for refund of overcharges, the court declined to order refunds on apartments 1 and 4 on equitable grounds.

This action is grounded on evasion. The claim is that six certain written contracts for the sale of individual apartment units evade the Act, and Sec. 825.8 of the Regulations.

The trial court took the view that these contracts were not entered into in good faith and, therefore constituted evasion on the authority of *Woods vs. Burg*, 82 F. Supp. 242, which was an action by the expediter to enjoin eviction when possession was sought under Sec. 209(a) (5) of the Act to sell the individual units. Sec. 209(a) and subsections are contained in Appendix D.

The analogy is lacking in the law applicable as well as the material and existing facts; and since complete reliance is placed on that case, that lack of anology is important:

1. Woods vs. Burg was an action to enjoin eviction proceedings to secure possession, directly involving Section 209(a) (5);

In the instant case, appellant has possession and no action to secure possession is involved.

2. Woods vs. Burg enjoined the action to secure possession on the ground that possession was not sought in good faith to remove from the rental market becouse there was evidence of a side agreement that "they could default at any time without further obligation";

In the instant case the record is free from any such statements by appellant or any statements or representations made by him of similar import. To the contrary, the vendee witnesses state there was no side agreement of any kind and that the written contract contained the full and only agreement between the parties. (2d R. p. 26, 35.)

3. Woods vs. Burg involved contracts for the sale of individual apartment units still in the possession of the tenants and the contracts were not yet completed and delivered to consummate a completed transaction and the purchasers had not obtained any legal or equitable interest in the building at the time of the hearing.

In the instant case the contracts were all executed and delivered before the vendee moved into and took possession under the contracts and were completed transactions under which legal and equitable rights had attached.

The trial court treated the recovery of possession of the housing units by petitioner, not only of the five on which notices were given to tenants, but likewise of the three which had been vacant for several months, as eviction

(1st R. p. 16, 60). It assumed also that the "Rent Administrator" (Expediter) had some say on evictions. (1st R. p. 16.)

But this cause does not involve the right to a writ of eviction, an "action or proceeding to recover possession," or an action to enjoin an eviction. No phase of the rights and remedies provided by Sec. 209(a) (5) are here involved. This cause was past that stage, for possession of all accommodation units had been secured by proceeding in accordance with Sec. 209(c), making it unnecessary to proceed by or draw in question Sec. 209(a) (5). Possession, by the voluntary action of the tenants (*Woods vs. Malcolm-Dollyn*, 177 F. 2d 414, 416) in surrendering possession, excludes any relevancy of the good faith requisite to secure possession by action or proceeding and hence *Woods vs. Burg, supra*, of course has no bearing on the issue involved. The view of the trial court ignores plain realities and self evident facts, and employs wholly unrelated and inapplicable matters of law and facts to find support for the evasion claimed, through unlawful findings.

Over objections, the six vendees were permitted to testify for the obvious purpose of discrediting the contracts to which they themselves were parties. This testimony was not to, and did not, establish any side agreement or understanding differing from the written contracts, which was the point in *Woods vs. Burg, supra*, evincing lack of good faith and which precluded eviction under Sec. 209(a) (5); the testimony here was for the purpose of setting up a relationship different from the provisions of the contract, contrary to the well settled rule that the utterances in the contract determine the status therein set up, and contrary to the parole evidence rule; and, although the testimony was irrelevant, inconsequential and lacking in any probative value, it served and was used for the further purpose of affording the basis and excuse for findings of

fact, even though it is a well settled principle of law that the legal determination of written contract, unassailed for ambiguity, fraud, accident or mistake, is made from the contract itself and not from what the parties say, and no issue of any material fact is involved. The findings are not realistic and of substance but a subterfuge to elude the real issue of evasion.

From this immaterial and valueless testimony, the trial court filed certain findings, so called, among which was that the said contracts were not entered into in good faith and hence they evade Sec. 825.8; and from this, certain conclusions of law were drawn, but no conclusion of law was drawn on the status and relationship of the parties set up by the contracts which status and relationship is the essential and determinating question of this dispute.

The motive behind a contract which comports with legal forms and requirements is not open to question. If the contracts in question are legal in the light of Ohio law pertaining to the sale of an interest in land by contract, no mere regulation of the respondent can, by the findings of a trial court, nullify the contracts.

The order of affirmance of the Court of Appeals for the Sixth Circuit rests on and is controlled by the so-called findings of the trial court and the law applicable to the facts found. But we are not here concerned with any fact findings, or with Rule 52(a) of the Federal Rules of Civil Procedure. Under the issues made by the pleadings, there is no issue of any material fact, and on the appeal from the final order there is involved a sole question of law in the determination of the legal status and relationship set up by the contracts under controlling local law. This question the Court of Appeals shunted to the side.

This being an appeal in an equity cause, the entire cause is removed to the Court of Appeals to be tried *de novo* on the record and any material and competent evi-

dence, independent of any findings or conclusions of the trial court. The appeal invokes an untrammelled examination and determination by the Court of Appeals. This appeal from the final order involves no discretion of the lower court. That discretion is displaced by fixed rules of law in determination of an unambiguous written contract free of any charge of fraud, accident or mistake. Appellant's brief in the Court of Appeals assigned some very pertinent and substantial errors of the trial court, as follows:

1. The Court erred in taking jurisdiction over the subject matter of the contracts of sale.
2. The Court erred in overruling defendant's objections to the testimony of the parties to the contracts to vary and modify the legal effect of the contracts.
3. The Court erred in proceeding to trial on the merits with the plaintiff standing on the record and proceedings on the hearing of the application for a preliminary injunction.
4. The Court erred in excluding competent, relevant, material and proper evidence offered on behalf of the defendant.
5. The Court erred in admitting incompetent, irrelevant and immaterial evidence offered on behalf of the plaintiff and objected to by the defendant.
6. The Court erred in overruling defendant's motion at the opening of the trial to discharge the injunction and dismiss the action.
7. The Court erred in denying the defendant a jury trial on the question of fraud in evasion.
8. The Court erred in denying the defendant a continuance when surprised by plaintiff standing on the record and proceedings on the hearing for a preliminary injunction and resting without introducing any further evidence.
9. The Court erred in departing from the pretrial conference plan of procedure for the trial of this cause on the merits.

10. The judgment is against the weight of the evidence.

11. The judgment is against the law and the evidence.

12. Under the pleadings and all the evidence in the case, the judgment should be for the defendant.

13. The evidence shows that the plaintiff comes into court with unclean hands, seeking equitable relief when he has failed to do equity.

14. The Court erred in overruling defendant's motion for non-suit for insufficiency of plaintiff's evidence.

15. The Court erred and abused its discretion in overruling defendant's motion for a new trial and rehearing.

16. The Court erred in making findings of fact which are but conclusions.

17. The Court erred in granting the preliminary injunction.

18. The Court erred in depriving defendant of property rights in violation of the 5th and 14th Amendments to the Constitution of the United States and of Article 1, Section 1 of the Constitution of the State of Ohio.

The appeal from the final judgment invoked the review powers of the Court of Appeals over these particular questions of law and procedure under determined and fixed rules, unaffected by any findings of immaterial and irrelevant facts. The appeal calls for a determination of what these contracts are, juridically considered. Petitioner has been denied that consideration and determination which by law is imposed. No attempt was made to give these questions, presented on appeal, the determination the appeal invokes. Appeal from the final order does not invoke the Appellate Court's determination whether findings are supported by substantial evidence but an independent examination and determination on the errors assigned.

QUESTIONS PRESENTED

Broadly stated, the fundamental question in this petition is whether, under the Housing and Rent Act of 1947, as amended in 1948, and the Regulations promulgated in pursuance thereof, the Expediter has power and authority to enjoin the sale by contract of individual accommodation units in an apartment building, when the units, though controlled housing when rented, are withdrawn from the rental market, unoccupied, and in full possession and control of the owner when contracted for sale, without any court action to recover possession and when the contracts under local law are a legal, enforceable and completely integrated instrument unassailed for ambiguity, fraud, accident or mistake.

Particularizing, first with reference to Sec. 825.8 of the Regulations, on which this action is predicated, which forbids the evasion of maximum rents and other requirements, the first question is whether contracts for the sale of an interest in real estate adjudged by local decisions and law as valid instruments creating legal and enforceable rights between vendor and vendee, can constitute evasion of the Act and Sec. 825.8, and second, whether, to answer in the affirmative, would not be in direct conflict with and in violation of the unalienable right to dispose of property, protected by the Constitution and Bill of Rights of both the United States and the State of Ohio.

Following logically from the foregoing is the question whether or not jurisdiction of the subject matter of the contracts is not completely lacking when by local law, the relationship established by the contracts is that of vendor and vendee, and not landlord and tenant.

A further question is whether the determination of evasion, on which this action is grounded, draws in a consideration of the good faith requisite provided by Sec. 209

(a) (5) of the Act, to maintain an "action or proceeding to recover possession," where the owner had possession of all his apartment units, making unnecessary any "action or proceeding to secure possession."

Under the issues made by the pleadings, when there is involved only the legal determination of an unambiguous written contract, and no dispute in the material evidentiary facts, the question is whether a lawful determination of that contract can rest on findings founded on immaterial and inconsequential evidentiary facts.

In an equity cause involving the legal determination of unambiguous contracts, the question is whether the Appellate Court has departed from the accepted and usual course of judicial procedure and denied petitioner an appeal in refusing to consider petitioner's assignments of error, and the law question involved, but rendered a judgment, without opinion, grounded on the findings filed by the trial court and the law applicable to those findings, under Rule 52(a) of the Federal Rules of Civil Procedure.

Further, is the question whether the respondent is concluded by the unreported case of *United States vs. Neal et al, supra*, (Appendix C) that no material facts are in issue, that the court is without jurisdiction over the subject matter of the contracts and the complaint fails to state a claim upon which relief can be granted.

In considering the practical effect of this decision, the grave and fundamental question arises, how can this decision square with constitutional provisions, guaranteeing the liberty of contract and the right to dispose of property, when the contracts disclose on their face a legal and enforceable instrument, embodying a legal and valid means of disposing of property, and when, by the terms of the contract, there is a clear intention to a complete integration, and when, further, there is no evidence of any side or oral agreement being the true contract.

REASONS FOR GRANTING THIS PETITION

1. As stated in his petition for a writ of *certiorari* in the appeal from the interlocutory order in this cause, (No. 525, October Term, 1949), the decisions of the Court of Appeals for the Sixth Circuit and the District Court, place in jeopardy every existing contract for the sale of housing accommodations, whether a house, duplex or multiple dwelling unit, and if allowed to stand unreversed, is an invitation to thousands of purchasers by contract to seek to escape their obligations on some flimsy, irrelevant and fallible evidence to show bad faith on one pretext or another. Under a law as far reaching as this decision, which is violative of different well settled rules of contract law, no one could safely buy or sell by contract without taking great chances of trouble ahead. Unless these decisions are reversed, and the ruling of the lower court that these contracts are in effect leases, and the vendees under the contracts are tenants in a landlord-tenant relationship, there will be no certainty of what interpretation will be placed on a contract, otherwise legal and enforceable under local law by the parties thereto, when it involves a controlled housing accommodation when and if rented. The decision virtually outlaws sale by contract of controlled housing units and creates a risk with every such contract, that a vendee may come in with a claim that it was understood to be only a leasing.

This decision lends encouragement to any vendee to seek the annulment of a contract for fraud in being taken advantage of because he was only 29 years of age, owned no stocks or bonds, and owned no other property and never had owned any and was in need of a place in which to live, testimony of which character and to which effect, together with some opinion evidence of the court on certain provi-

sions of the contract, induced the findings and decision of the court. As a federal case and decision, it would be a powerful precedent, and would be used and followed with vicious results.

2. The decision of the Court of Appeals for the Sixth Circuit is a challenge to the power of the state to control the legal rights and interests respecting real estate within its borders. It is in direct conflict with Ohio law pertaining to the sale by contract of an interest in real estate.

This decision violates the well settled rule that contracts are interpreted and construed by local law, and if valid under local law, they are valid everywhere, and federal courts will give effect to that local law. That rule of law is of nation wide application and has been so pronounced by the Court of Appeals for the Sixth Circuit, and so decided by this Court.

Erie R. R. Co. vs. Tomkins, 304 U. S. 64;
Forsythe vs. Hammond, 166 U. S. 506;
McGregor vs. State Mutual Life Ins. Co., 119 F. 2d 148 (C. C. A. 6);
In re *Central States Freight Corp.*, 46 F. 2d 545 (C. C. A. 6).

On questions of public policy, the creation of legal rights and interests, the modes of acquiring, disposing of and conveying and encumbering real estate, the state law is supreme.

Arndt vs. Griggs, 134 U. S. 316;
May vs. Mulligan, 36 F. Supp. 596, 117 F. 2d 259 (C. C. A. 6).

In Ohio, as in many other states, contracts for the sale of an interest in real estate is a very common way to dispose of property. It does not pretend to convey but agrees to convey upon the performance of mutual obliga-

tions. Such contracts have a definite legal standing and meaning in Ohio Jurisprudence, and that status is recognized and upheld in many statutory enactments and court decisions in the state of Ohio.

Gen. Code, Sec. 8621;
Gen. Code, Sec. 12236;
Gen. Code, Sec. 11902;
Bridgeman vs. Wells, 13 Ohio Rep. 43;
Grant vs. Hickok Oil Co., 84 O. App. 509;
Standard Oil Co. vs Moon, 34 O. App. 123;
Churchill vs. Little, 23 O. S. 301.

To bring to this Court's attention, the status of such contracts in Ohio as pronounced by the highest court of the state, there is quoted below from the opinion of the Court in the last above case, page 307:

> "An executory contract for the purchase and sale of land is not an instrument of that character. It is a legal instrument, and forms the basis of legal as well as equitable remedies; but it does not convey or purport to convey or legally encumber or effect any estate or interest in the land. The vendor, suing upon it, may recover the price of the land contracted to be sold, and he, failing on his part to perform it, may be compelled, at the suit of the purchaser, to respond in damages for his default. It constitutes also, in favor of the purchaser, a claim to the title to the land which, in a proper case, may be specifically enforced through the agency of a court of equity. This right to compel a specific performance of the contract constitutes the purchaser's equity in the land, the vendor being, in equity as to the land, regarded as the trustee of the purchaser; but in either aspect, whether regarded as the basis of a legal or equitable claim, the right of the purchaser rests in action, and the contract is therefore essentially a chose in action."

Two or more persons may buy property in partnership.

Yeoman vs. Lasky, 40 O. S. 190;
Hulett vs. Fairbanks, 40 O. S. 233.

General rule of construction applies to land contracts.

Curtis vs. Factory Sales Co., 12 O. App. 148.

This Court has held that, in the absence of fraud, accident or mistake, a court of equity cannot change the terms of a contract or slight legal rights and however strongly the Chancellor may be impelled to grant equitable relief, he is powerless to do so if the one from whom it comes will be deprived of a legal right.

Hodge vs. Dixon County, 150 U. S. 182;
Manufacturers' Finance Co. vs. McKey, Trustee, 294 U. S. 442.

The written contracts for the sale of individual units in this apartment building conform to the laws of Ohio, and to the general form of so-called land contracts, used and followed in Ohio. The decision of the Appellate Court gives no heed to the requirements of law that these contracts and the legal rights provided therein be not disturbed except for fraud, accident or mistake. The affirmance of the order of the lower court places the stamp of approval on the lower court in an equity cause granting supposedly equitable relief in deprivation of legal rights created and controlled by local law. The decision nullifies the supreme position which the local law occupies in creating relations and status relative to real estate located within the state.

3. In failing and refusing to give full credit to the supremacy of local law in the determination of these contracts, the decision of the Court of Appeals for the Sixth

Circuit comes in conflict with decisions of this Court. An act performed or a thing done, if inherently legal and within legal rights, is not evasion because it avoids doing something which, if done, is required to be done in a certain way. The petitioner chose to not rent. By so doing he avoided the effect of the law and regulations, but that is not evasion. He chose to sell the property by selling individual units by contracts legal by local law. That is not evasion under standards prescribed by this Court.

> "A case is on one side of a statutory line or on the other. If it is on the safe side, it is none the worse legally because the full measure of what the law provides is availed of; to condemn one act as an evasion, it must be on the wrong side of the line, as indicated by the policy, if not the mere letter of the law."
>
> *Bullen vs. State of Wisconsin*, 240 U. S. 625.

Also this Court has ruled that

> "If a device is carried out by means of legal forms, it is subject to no legal censure."
>
> *United States vs. Isham*, 84 U. S. (17 Wall 496) 506.

It is said that evasion is a fraudulent act of escaping or slipping away by craft or artifice from a duty imposed by law.

> Chief Justice Stone in *Keegan vs. United States*, 325 U. S. 478, 501.

It is a novel, and to say the least, an extreme contention, and an ill considered judgment, which affirms that contracts in conformity to legal forms and controlling local law involving the sale of real estate are craft and artifice in escaping a duty. The duty petitioner owed to respondent terminated when these apartments became and re-

mained vacant as rental units. Selling by well recognized and settled local and lawful means and methods obviously neither revives that duty, nor has any semblance to craft or artifice.

Many inferior court reports reveal consistent adherence to the pronouncements of this Court in this respect wherever the question of evasion has arisen in connection with valid, mutually enforceable agreements. A few of these cases have involved nearly the identical question which was before the Appellate Court involving federal controls. None of these cases has been brought to this Court by the respondent herein, though there is little doubt that had they been brought here, the judgment in these cases would have received the approbation of this Court.

Denning and Company vs. Fleming, 160 F. 2d 697;

Woods vs. White, 172 F 2d 356;

United States vs. Neal et al, Civil Action No. 8539 U. S. D. Court, E. D. Michigan, (Contained in Appendix C);

Tudor Arms Apartments vs. Wilson Shaffer, 62 A. 2d 346.

In the latter case, where tenants were resisting evictions from units in a cooperative apartment, large enough to justify selling by issuing shares of capital stock, the Court rejected the claim of evasion, saying (page 348):

> " • • • the essence of the transaction is that in exchange for a capital investment a prospective purchaser will obtain a right, under the proprietary lease, to occupy a particular unit for an indefinite period, during good behavior. When all of the stock is disposed of, the promoters will be out of the picture, and the management will be in the hands of the stockholders. This was some of the most important *indicia* of ownership. *It could hardly be*

> *contended that the sale of a house to a group of tenants in common would not be within the exception.* From the nature of the subject matter, ownership under a co-operative plan must take the form of rights incident to stock ownership or membership in a corporation. The substantial nature of these rights, rather than the form of the transaction, must be considered * * * ." (Emphasis supplied.)

Likewise in this cause, for a consideration the vendees are obtaining rights, enforceable in a court of equity, and the vendor is divesting himself of rights and property, and upon fulfillment of the contracts they receive title to the property as tenants in common, to incorporate or continue to operate as tenants in common as they wish. The vendor is then out of the picture.

All of which goes to the legality of the transaction, and as a legal transaction "it is subject to no legal censure."

This rule of law laid down by this Court years ago and frequently restated, the Court of Appeals for the Sixth Circuit declined to apply to the instant cause bringing about a conflict with this Court's ruling on what constitutes evasion.

4. In different circuits of the United States Court of Appeals, are found decisions which, while arising in cases brought by the Expediter to enjoin evictions, at the same time recognize and approve the sale by contract of individual apartment units where the sale has been completed and the purchaser in possession, leaving unmolested and in effect without any claim that the contracts are an evasion of the law.

Woods vs. Malcolm-Dollyn, 177 F. 2d, 414;
Woods vs. Alexander, Civil Action No. 5192,
U. S. D. Court, W. D. Missouri.

In this Sixth Circuit, though not having reached the United States Court of Appeals for the Sixth Circuit by reason of no appeal by the plaintiff (Respondent herein) from the order of dismissal, is *United States vs. Neal et al*, Civil Action No. 8539 in the United States District Court for the Eastern District of Michigan, Southern Division. This case is on all fours with the instant cause, and was dismissed on the motion of defendants for a summary judgment of dismissal, there being no issue of any material fact involved. Appendix C contains the pleadings, the motion to dismiss and the order of dismissal.

Identical issues are raised in the *Neal* case and in the instant case. The matters and issues argued and submitted to and considered and decided by the court in passing upon the motion for summary judgment of dismissal, were the identical matters and issues before the trial court in the instant cause. The only difference is that the trial court in the *Neal* case held that there was no issue on any material fact, as petitioner contends in this cause, and dismissed the cause with no evidence being heard, while in the instant cause though it is conceded there is no dispute in the evidentiary facts, yet evidence is heard, and on that immaterial and irrelevant evidence, findings are predicated from which lack of good faith is inferred, not from material evidence, but from speculative inferences and opinion.

Goodman vs. Simonds, 61 U. S. 343;
National L. R. B. vs. Louisville Refining Co.,
102 F. 2d 678 (C. C. A. 6).

The conflict which this decision brings about in the Eighth Circuit, and possibly in others not known about, and in this Sixth Circuit, involves substantial property rights which should receive uniform application of the Housing and Rent Act and the Regulations thereunder.

5. This is the question of federal law which has never been decided by this Court, but should be brought here and settled. Various phases of the question have arisen in different Circuits of United States Courts of Appeal usually in proceedings to enjoin evictions, and some phases of the question discussed, but as far as petitioner can determine, the clear cut question has arisen only in this cause and in *United States vs. Neal et al, supra*, resulting in diametrically opposing decisions on an important question of law which should not be left in a state of suspension to confuse the question in other like cases and to confuse property owners and leave them in an uncertainty respecting their rights to sell by contract or by other methods lawful by local law. If respondent, by Sec. 825.8 can lawfully accomplish what is being here attempted, and for which there is an order in force, the effect is broad enough and of sufficient importance on local laws and property rights to justify from this Court a pronouncement on the legality of the proposition. The law should be settled by this Court in the interest of uniformity.

Magnum Import Co. vs. Coty, 262 U. S. 159, 163;

Columbus Watch Co. vs. Robbins, 148 U. S. 266.

In connection with this federal question, three important questions present themselves.

First, having failed to appeal from the summary judgment of dismissal in *United States vs. Neal et al., supra*, is not the decision both *res judicata* and *stare decisis* as to the respondent?

The issues made by the pleadings are identical in the two cases (2d R., p. 137, Appendix C). The point of law involved—do legal contracts of sale of individual apartment units evade Sec. 825.8 of the Regulations,—was ad-

judicated to a finality and respondent having allowed the judgment to be awarded against him is concluded by the law decided in that case.

Nashville C. & St. L. R. Co. vs. United States, 113 U. S. 261;

Brooklyn City & N. R. Co. vs. National Bank, 102 U. S. 14;

Harding Co. vs. Harding, 352 Ill. 417;

Bennett vs. Comm. of Int. Rev., 113 F. 2d 837.

United States vs. Neal, supra, was called to the trial court's attention in a memorandum supporting a motion for non-suit filed May 22, 1950 (2d R., p. 127). The final order was filed May 23, 1950. In a supplemental memorandum filed May 29, 1950 (2d R., p. 133) petitioner again gave the court full information on the issues involved and again in a motion for a new trial (2d R., p. 156). The trial court refused to follow the general rule that a matter which is decided by any District Judge within the district, should be so decided, without examination by another judge.

United States vs. Herschhorn, 21 F. 2d 758;

Burstine & Sussman vs. United States, 16 Ct. Cust. App. 282;

U. S. vs. Kwong Lee Chong Co., 23 C. P. A. (Customs) 327.

The District Court for the Eastern District of Michigan having first entered judgment, the trial court in this cause should have conformed to the law established by the *Neal* case, no appeal having been taken.

Nachod & U. S. Signal Co. vs. Helvring, 74 F. 2d 164;

Grand River Dam Authority vs. Going, 29 F. Supp. 316, 325.

Second. Since the District Court is a court of limited jurisdiction, and there is involved here integrated written contracts, the question is whether or not jurisdiction of the subject matter is dependent upon the context of the written instrument to determine the relationship created. Does not the question of the Court's jurisdiction turn upon the sole question of law—determined from the contract—what status and relationship of the parties is set up by this contract?

This Court on *certiorari* has jurisdiction to correct the error of the lower court in assuming jurisdiction over the subject matter of these contracts, and order the action dismissed.

Lion Bonding, etc., Co. vs. Karatz, 262 U. S. 640.

Third. If Sec. 825.8 of the Regulations pretends to make contracts for the sale of individual apartment units evasion thereunder, the question is whether or not such provision of the Regulations is a direct infringement upon the unalienable right to dispose of property in the modes provided by local law contrary to Constitutional provisions and the Bill of Rights.

Were it not for what this erroneous judgment has actually accomplished, it would seem trite to make the contentions necessary to bring out this infringement on petitioner's right to sell by contracts legal and enforceable under controlling local law. Conceding that Sec. 825.8 is a lawful regulation as pertains to rents, such regulation cannot hurdle a constitutional barrier, and by an untrue finding, draw in a matter wholly outside the ambit of the Regulation and the law. Findings are but an intermediate procedural step to the end of deciding a controversy and, as this Court has said, a rule of practice must not be al-

lowed for any technical reason to prevail over a constitutional right.

Gouled vs. United States, 255 U. S. 298, 313;
Agnello vs. United States, 269 U. S. 20, 34.

Nor can a mere regulation enlarge or go beyond provisions of the law.

Miller vs. Standard, 49 F. 2d 79, 81;
Koepke vs. Fontecchio, 177 F. 2d 125

The order of the trial court, affirmed by the Court of Appeals for the Sixth Circuit, does violence to both these pronouncements of law, and by indirection and subterfuge of pretended findings, reaches into alien domain.

The 5th and 14th amendments to the Constitution of the United States and Article 1, Section 1 of the Constitution of Ohio protect petitioner in his right to acquire, use and dispose of his property according to his will, so long as the uses and purposes are not in conflict with public interest.

> "Property is everything which has an exchangeable value, and the right of property includes the power of disposing of it according to the will of the owner."
>
> *Ward vs. Maryland,* 12 Wall, 418.

The Constitution protects these essential attributes of property save where on reasonable grounds they might be against public interest or harmful to public order.

U. S. vs. Caroline Products Co., 7 F. Supp. 500;
Adair vs. U. S., 208 U. S. 161;
Terrace vs. Thomson, 263 U. S. 197.

The Civil Rights Act of April 9, 1866, 8 U. S., Sections 41, 42 further strengthened and protected this right of owning and disposing of property.

This Court in several cases in the recent past has given consideration to civil rights and has promptly taken up the challenge to those rights, and exercised its power of supervision and correction when there was brought before the Court infringements on those rights. While the Civil Rights Act was enacted primarily to secure to the colored race the rights and privileges of citizenship which the white people enjoy, it none the less gives that same protection to the white, colored, yellow and all against all infringements on all rights protected by that Act.

Palko vs. Connecticut, 302 U. S. 319;
Adamson vs. California, 332 U. S. 46;
Corrigan vs. Buckley, 271 U. S. 323;
Hill vs. Texas, 316 U. S. 400;
Hurd vs. Hodge, 334 U. S. 24.

Obviously, it is the duty of the Court in this cause to see to it that the protection which the Constitution guarantees petitioner in selling and disposing of his property is not nullified by procedure which not only departs from the usual course of judicial procedure, but which is based on non-existent facts and the law applicable to those non-existent facts, rather than on the law applicable to the issue on which the action is predicated.

Here, the finding of evasion is attributable directly to the erroneous and unlawful procedure of the trial court. Had the proceedings been conducted in the usual course, in proof of the claim of evasion, a different finding would have resulted. Where, as in this case, there are completely integrated contracts for the sale of housing accommodations, evasion cannot be sustained, because the Constitution protects petitioner in his right to dispose of property in any way legal under the laws of Ohio. By the Civil Rights Act, the Congress has assured him and all persons and citizens that they may demand the protection of those rights.

Constitutional provisions and safeguards may not be nullified and made ineffective by resorting to some novel and extreme and, at the same time, unlawful plan of judicial procedure, as was done in this case, on findings of unrelated and non-existent facts, to establish, as renting, certain contracts for the sale of real estate, recognized by the laws of Ohio and widely used in making sales of real property.

These are the elements which have produced the court's order, which prevents petitioner from selling his housing units, and is plainly in violation of the provisions of the Civil Rights Act. They present, for determination, the application of the Civil Rights Act to these findings and proceedings, originating in the trial court and sanctioned by the Appellate Court. They involve directly the question of petitioner's protected civil rights to dispose of his property, and clearly and plainly are these matters for the consideration of this Court, and the Court of Appeals having refused to give consideration to these questions, it is only through the medium of this Court's action and power of supervision that these civil rights may be protected.

6. What has been brought out, hereinbefore, reveals a sharp, unwarranted and serious departure from the accepted and usual course of judicial procedure in the determination of issues. It is a serious departure in that it affords a way to arrive at a judjment, which, but for the departure, could not be reached. Confined to the issue of evasion, as this cause must be, there is no material fact in issue, since unambiguous written contracts are involved, raising only a question of law in determining what these contracts are, a renting or a sale by contract, there being no contention, or evidence of any side agreement differing from the written contract. No other facts are required to make a determination of the question of evasion and that determination will, at the same time, determine the question

of jurisdiction of the subject matter.

The introduction and use of immaterial, irrelevant, and undisputed evidence of no probative value, as a foundation for findings of fact, where no issue of fact is involved, and through such findings, to inject the issue of good faith in securing possession of units under Sec: 209(a)(5) when there was no "action or proceeding to recover possession," involving good faith, reveals a resort to an unlawful, as well as an unaccepted course of procedure, to inject into this cause unlawful findings on which respondent may repose, without considering or deciding the issue of evasion.

The sham of this finding of bad faith is further borne out by the lack of any evidence that petitioner was not ready, willing and able to perform and go through with these contracts to completion. When petitioner attempted to prove his intentions—his state of mind—with reference to these contracts, the testimony he offered was ruled as self serving (2d R., p. 43, 51, 53), contrary to the well established rule that when intent, or state of the mind, is in issue, contemporaneous, oral or written, declarations are admissible, and the self serving rule does not apply. This Court has so ruled.

Connecticut Mutual Life vs. Hillmon, 145 U. S. 285, 295;
United States vs. Gentry, 119 F. 70;
Chichester Chemical Co. vs. United States, 49 F. 2d 516.

Petitioner secured possession of these apartments in the summer and fall of 1948 to sell, and did sell six units, when the unlawful interference of respondent, and the unlawful injunctive order involved in this proceeding, held up further sales and encouraged and led the six purchasers to believe that the contracts were of no force and effect, and could be disavowed, and the apartments abandoned

at any time. All vendees have vacated their apartments and the building now stands empty, save for one apartment temporarily occupied by petitioner to keep vigil over the property, and has been practically empty for two years pending these appeal proceedings, and the expected determination by the Court of Appeals for the Sixth Circuit. This determination not coming, petitioner, in order to place these apartments again on the market for sale, or restore to the original purchasers, has instituted in the local state court of general jurisdiction, an action for an injunction to restrain the within respondent, and his subordinates, from filing any court action or in any way interfering with the sales of these apartment units by these contracts and to restrain Frank L. Kloeb, Judge of the United States District Court, from assuming any jurisdiction over said contracts in the sales of the apartment units by these contracts.

The Court of Appeals for the Sixth Circuit made no determination of the issue of evasion as pertains to these contracts. Neither did the trial court. That question is yet unanswered and undetermined.

The Appellate Court confined its determination to the findings the lower court filed. But

> "A finding of fact is not the goal of the judicial proceeding, nor is it the relief which a court of justice accords a litigant. It is merely an intermediate step in the judicial process of deciding a controversy. Its office is to distill the evidence which has been adduced at the trial of a *disputed* issue, the pertinent fact of which must be known by the court in order to enable it to determine and apply the relevant rules of law and thereupon to grant appropriate relief to the litigant." (Emphasis supplied.)
>
> *Hartford-Empire Co. vs. Sawkee Mnfg. Co.*, 147 F. 2d 532, 535.

Moreover,

> " • • • In so far as the court undertook to determine the existence or validity of the alleged contract, whether in findings of fact or conclusions of law, it involves legal determination which we ourselves are competent to make and may do so notwithstanding Federal Rules of Civil Procedure, Rule 52(a), 28 U. S. C. A. following Sec. 723c."
>
> *Back vs. Friden Calculating Machine Co.*, 155 F. 2d 361, 364 (C. C. A. 6);
>
> *United States vs. Wholesale Oil Co.*, 154 F. 2d 745.

Manifestly the Court of Appeals, on this appeal, was not concerned with any findings of fact or with Rule 52(a). The construction of that rule where applicable is well recognized, and it is not questioned that findings of fact will not be set aside unless clearly erroneous. But that rule cannot be interpreted to apply to pretended findings from irrelevant and inconsequential undisputed facts, and interposed to foreclose an independent examination and review on appeal. This appeal from the final order of the lower court draws in question all the rulings producing its judgment and assigned as errors (*Roth vs. Hyer*, 142 F. 2d 227 Cert. Den. 323 U. S., 712). These assignments of error, the Court of Appeals refused to consider. It could not, while refusing to consider the errors assigned, retain the case and adjudicate the merits. This it did when it affirmed the order of the trial court. (*Twist vs. Prairie Oil & Gas Co.*, 274 U. S. 684, 692).

The Court of Appeals failed to follow procedural and lawful requirements and to give consideration to the lawpoint in issue and make a legal determination of the written documents involved in this cause.

Although there is no issue of fact involved, it being

conceded that there is no dispute in the evidentiary facts, respondent has throughout the proceedings in this cause stressed the so-called findings of the trial court, refusing to meet the evasion issue.

As it is so well brought out in *Crosley Radio Corp. vs. Dart*, 160 F. 2d 426, 431:

> "Much reliance is placed by the appellee upon the so-called findings of fact by the district judge. But the problem here presented involves the interpretation of a written contract. No contention is made that the writing did not express the agreement of the parties. In construing the contract we are confronted with a legal question within the competence of this court to decide. Even were we to consider determinations of the court as findings of fact, binding upon us unless clearly erroneous, there would be doubt whether, under the mandate of Federal Rules of Civil Procedure, Rule 52(a), 28 U. S. C. A. following Section 723c, that "due regard shall be given to the opportunity of the trial court to judge of the credibility of the witnesses," findings adopted verbatim in the languages of the prevailing counsel after a four year interval, merits the regard which the rule contemplates. This, however, we are not required to decide."

And petitioner anticipates respondent's continued reliance on the so-called findings and will likely urge the application of the well established rule that concurrent findings of two courts below will be accepted by this Court. Where the contested claims are purely or largely factual, that is a salutory and proper rule of application, but here there is no contest on factual claims. There is no dispute in the evidentiary facts. The question is solely one of law to be arrived at from a determination of the contracts.

Further, this rule does not apply strictly.

Thomson vs. Spot Welder Co., 265 U. S. 445.

This Court will examine the foundation for findings in particular cases.

Baumgartner vs. United States, 322 U. S. 665.

And this is true especially where there is a conflict in decisions.

Bellavance vs. Marrow, 141 F. 2d 378, Cert. Den. 322 U. S. 742;

Sanitary Refrigerator Co. vs. Winters, Wisc. 280 U. S. 30.

The supervisory powers of this Court are urgently needed in this cause to correct illegal judicial processes to the end that a judgment will be reached on the law applicable to the issue involved instead of on so-called findings founded on non existing facts and inapplicable law.

The foregoing reasons for granting this petition are grounded on departures from and failure to follow well established principles of law and procedure in arriving at a judicial redetermination of an issue. Non-existing facts are employed to justify the reliance on and injection into the case of an issue not made by the pleadings; and resting a judgment on that injected issue in disregard of the issue of evasion, a pure question of law. The decision of the trial court, sanctioned by the order of affirmance of the Court of Appeals, in circuitous and labored mental processes, rests on Section 209(a) and the subsection provisions thereof, as is made manifest by the trial court's reliance on the case of *Woods vs. Burg*, 82 F. Supp. 242. Such misapprehension and misapplication of the law and facts is at clear variance with the issues in this cause. Such variance and the reasons given for granting this petition, disclose rulings of substantive and procedural law which violate and are in conflict with federal and state law and decisions of the highest and concurrent courts and violate constitutional inhibitions.

PRAYER

Wherefore, the petitioner prays that a writ of *certiorari* be issued by this Court, directed to the United States Court of Appeals for the Sixth Circuit, to the end that said order of affirmance and judgment of the United States Court of Appeals for the Sixth Circuit in the case of Orin C. Clement, petitioner herein, vs. Tighe E. Woods, Housing Expediter, Office of Housing Expediter, respondent herein, in cause No. 11,286, be reviewed by this Court, as provided by law, and upon such review by this Court, said judgment and order of affirmance be reversed, and the cause be remanded with order to vacate and set aside the final order of the trial court, dissolve the injunctive order issued, and dismiss the action, and for such other and further relief as to this Court may seem proper and appropriate.

ORIN C. CLEMENT,
302 Columbia St.,
Toledo, Ohio.
Petitioner, per se.

APPENDIX A

IN THE
UNITED STATES COURT OF APPEALS
SIXTH CIRCUIT

No. 11,286

Orin C. Clement,

Appellant,

vs.

Tighe E. Woods, Housing Expediter,
Office of the Housing Expediter,

Appellee.

ORDER
(Filed: Oct. 16, 1951)

Before Hicks, Chief Judge, Martin and Miller, Circuit Judges.

The second appeal in this case came on to be heard upon the record and upon the briefs and oral arguments of the appellant, a lawyer, in *propria persona*, and of the attorney for the appellee;

And it again appearing that the findings of fact filed by the district court are abundantly supported by substantial evidence in the record and that the conclusions of law applicable to the facts found are correctly drawn by the district court;

The final order and judgment against appellant entered in the district court is accordingly ordered to be affirmed.

(s) John D. Martin,
United States Circuit Judge.

APPENDIX B

RENT REGULATIONS FOR HOUSING
13 F. R. 5706, Section 825.8

"Sec. 825.8—Evasion—(a) General—The maximum rents and other requirements provided in Sec. 825.1 to 825.72 inclusive shall not be evaded either directly or indirectly, in connection with the renting or leasing or the transfer of a lease of housing accommodations, by way of absolute or conditional sale, sale with purchase money or other form of mortgage, or sale with option to repurchase or by modification of the practices relating to payment of commissions or other charges or by modification of the services furnished with housing, or by tying agreement, or otherwise."

APPENDIX C

In the United States District Court
For the Eastern District of Michigan
Southern Division

Civil Action No. 8539

United States of America,

Plaintiff,

vs.

Donald B. Neal,
Gladys Morton (a. k. a. Gladys Neal)
8235 Livernois Avenue,
Detroit, Michigan

Bowden Morton,
Maggie Morton,
1767 East McNichols Road,
Detroit, Michigan

Defendants.

COMPLAINT

1. Jurisdiction for this action is conferred upon the Court by Sections 205 and 206(b) of the Housing and Rent Act of 1947, as amended (Public Law 31, 81st Congress) (First Session), and the defendants and the hereinafter stated cause of action are within the jurisdiction of this Court.

2. Defendants, whether one or more, as shown above in the style of this case, as landlords, have demanded and received rent for the use and occupancy of controlled housing accommodations described in Schedule A, attached hereto and made a part hereof, as though fully written

herein, which housing accommodations are within the defense-rental area mentioned in Schedule A and subject to rent control.

3. At all times mentioned herein and as set forth in Schedule A, the controlled housing accommodations were rented by defendant, as landlords, and were subject to the Housing and Rent Act of 1947, as amended, and the controlled rent regulations issued thereunder.

4. In the judgment of the Housing Expediter, defendants have engaged in acts and practices which constitute and will constitute violations of Sections 206(a) and 204(b) of the Housing and Rent Act of 1947, as amended, and is about to engage in acts and practices which constitute or will constitute violations of a provision or provisions of Title II of said Act, and unless enjoined and restrained will continue to engage in such acts and practices.

5. During the periods set forth and on the occasions stated in Schedule A, defendants have demanded, accepted and received as rental for controlled housing accommodations sums in excess of the maximum legal rents, which maximum legal rents are set forth in Schedule A.

6. Section 8 of the Controlled Housing Rent Regulation provides as follows:

> Section 825.8 Evasion—(a) General.—The maximum rents and other requirements provided in Sections 825.1 to 825.12 shall not be evaded, either directly or indirectly, in connection with the renting or leasing or the transfer of a lease of housing accommodations, by way of absolute or conditional sale, sale with purchase money or other form of mortgage, or sale with option to repurchase or by modification of the practices relating to payment of commissions or other charges or by modification of the services furnished with housing accommodations, or by tying agreement, or otherwise.

7. More than thirty days have elapsed since the occurrence of the violations set forth in Schedule A of the Complaint, and the tenants of said housing accommodations named therein have failed to institute any action pursuant to Section 205 of the Housing and Rent Act of 1947, as amended, on account of said violations.

Wherefore, plaintiff demands:

1. That a preliminary and final injunction issue enjoining and restraining defendants, defendants' agents, servants, employees and all persons acting in concert or participation with any of them from directly or indirectly

(a) Soliciting, demanding, accepting or receiving any rent in excess of the maximum rent prescribed by the Controlled Housing Rent Regulation, as heretofore or hereafter amended, or in excess of the maximum rent permitted by any other Regulation or Order heretofore or hereafter adopted pursuant to the Housing and Rent Act of 1947, as heretofore or hereafter amended, extended or superseded.

(b) Committing any other violation of the Said Act or Regulation, or as it may be amended, extended or superseded.

2. That defendants be required and directed to pay to the Treasurer of the United States for and on behalf of all persons entitled thereto a refund of all amounts in excess of the maximum rents, or in the alternative that such refund be paid to the Treasurer of the United States.

3. Judgment in favor of the United States for Thirty Thousand Seven Hundred Eight Dollars & Twenty Seven Cents ($30,708.27) being three times the amount by which the rental received by defendants during the period of eleven months ending thirty (30) days prior to the filing of this Complaint, exceeded the maximum rental established by the regulation; provided that in the event the Court

shall order a refund of such overcharges, then the judgment demanded by plaintiff may be reduced by the amount of such refund.

4. For costs of this action and for such other, further and different relief as to the Court appears warranted in the premises.

Paul Marshall, Attorney,
Office of the Housing Expediter.

Dated: October 13, 1949.

Address:
Office of the Housing Expediter
Regional Office
1510 Euclid Avenue
Cleveland 15, Ohio
Cherry 7900

ANSWER

Now come the defendants in the above entitled cause and herewith make answer to the complaint of the plaintiff filed in the above cause, and respectfully state unto this Honorable Court as follows:

1. These defendants deny the allegations contained in Paragraph 1 of the complaint for the reason that jurisdiction is conferred upon the Court by the Housing and Rent Act of 1947, as amended, only in relation to matters effecting landlord and tenants, and that the matters complained of by the plaintiff in its complaint do not relate to the relationship of landlord and tenant.

2. Answering Paragraph 2 of plaintiff's complaint, these defendants deny the allegations therein contained.

3. Answering Paragraph 3 of plaintiff's complaint, these defendants deny the allegations therein contained,

with the exception, however, that your defendants state that some of the apartment units located in the premises mentioned in Schedule "A" are rented, but none of the persons mentioned in Schedule "A" are tenants of the defendants, but rather, are purchasers from the defendants of their apartments on a contract of purchase, to which reference is more particularly hereinafter made.

4. Answering Paragraphs 4 and 5 of plaintiff's complaint, these defendants deny the allegations therein contained.

5. Answering Paragraph 6 of plaintiff's complaint, defendants admit that Section 825.8 of the Controlled Housing Rent Regulations provides as mentioned in the said paragraph of the plaintiff's complaint, but state that the said Regulation has no application to these defendants in connection with the sale by these defendants to the persons mentioned in Schedule "A" of the complaint of the apartments being purchased by them, to which purchase agreement reference is hereinafter more particularly made.

Your defendants further state that Section 825.8 of the Controlled Housing Rent Regulations is an unlawful and unconstitutional exercise of the rule and regulation making power of the Housing Expediter, for the purport of the same is to prevent the sale of apartments in an apartment house building to purchasers thereof who will ultimately become owners thereof of their apartment and a proportionate interest in the land on which the building containing the said apartments is located.

6. Answering Paragraph 7 of plaintiff's complaint, defendants deny that there is a relationship of landlord and tenant between these defendants and the persons mentioned in Schedule "A" of the complaint, and therefore, deny the applicability of the allegations in Paragraph 7 of the complaint to these defendants.

Further answering the matters set forth in the plaintiff's complaint, these defendants allege the following defenses:

FIRST DEFENSE

That the Court has no jurisdiction to entertain the complaint in the above matter based upon the Housing and Rent Act of 1947, as amended, as it relates to the subject matter of this action.

SECOND DEFENSE

Defendants state that the complaint herein fails to state a claim against the defendants upon which relief can be granted.

THIRD DEFENSE

That the Housing and Rent Act of 1947, as amended, is unconstitutional and void.

FOURTH DEFENSE

That Section 825.8 of the Controlled Housing Rent Regulations is unlawful and unconstitutional as it relates to the subject matter in this action.

FIFTH DEFENSE

Defendants state that all of the housing units and apartments mentioned in Schedule "A" of plaintiff's complaint were vacant and unoccupied at the time that occupancy thereof was taken over by the persons mentioned in Schedule "A" of the complaint, and that such persons went into possession thereof under contracts of purchase, copy of which is hereto attached and marked Exhibit "A," and to which reference is prayed for greater particularity.

That the defendants in the said contract agreed to sell to the said persons, and other persons purchasing other apartments in the said building located at 2716 Third Street, Detroit, Michigan, the particular apartment occupied by the said persons, and upon payment of the full purchase price your defendants would deliver a good and sufficient deed to evidence the ownership of the apartment purchased by the purchasers of each apartment and that the deed to each apartment, when received by the purchasers thereof, will convey an undivided interest in the land upon which the building housing the said apartment is located, in common with the other owners of apartments located in the said building, in such form that all of the purchasers will have a community of interest in the said building and land.

Defendants further show that latterly in the sale of the apartments in the building aforementioned contracts of purchase were entered into between the defendants and other purchasers of said apartments on the form of contract marked Exhibit "B" hereto attached, which is made a part hereof and to which reference is prayed for greater particularity. That prior to September 1, 1949 more than 65% of the apartments in the said building had been sold and occupied and/or occupancy available to the purchasers, and that the said contracts of purchase were then and there, and are now, fully effective. That upon the completion of the sale of 65% of the apartments in the said apartment house the defendants and a majority of the purchasers of the said apartments entered into an agreement relating to the contract rights of the parties and also relating to the matter of turning over to the purchasers of the apartments the management and operation of the building. That a copy of the said agreement is hereto attached, marked Exhibit "C," and made a part hereof, and to which reference is prayed for greater particularity.

Wherefore, your defendants pray that the Bill of Complaint be dismissed as to them.

Donald B. Neal,
Individually.
Gladys Neal,
Bowden Morton,
By Donald B. Neal,
Attorney in Fact.
Maggie Morton,
By Donald B. Neal,
Attorney in Fact.

Jeffries & Hersh (per David A. Hersh),
Attorneys for Defendants,
312 Maccabees Building,
Detroit 3, Michigan.
Te. 1-1230.

NOTICE OF HEARING

To: Mr. Paul Marshall, Attorney
Office of the Housing Expediter
Regional Office
1510 Euclid Avenue
Cleveland 15, Ohio

Please take notice that the undersigned will bring the within and foregoing Motion on for hearing before this Court at the Federal Building, City of Detroit, State of Michigan, on the 5th day of December, 1949, at 10 o'clock A. M., or as soon thereafter as counsel can be heard.

Jeffries & Hersh,
Attorneys for Defendants
312 Maccabees Building
Detroit 2, Michigan
Te. 1-1230

Dated: November 23, 1949

MOTION OF DEFENDANTS TO DISMISS BILL OF COMPLAINT UNDER CIVIL PROCEDURE RULE 12, OR IN THE ALTERNATIVE, FOR SUMMARY JUDGMENT UNDER CIVIL PROCEDURE RULE 56

Now come the defendants in the above entitled cause, by their attorneys, Jeffries & Hersh, and move that the plaintiff's Bill of Complaint in the above cause be dismissed with prejudice, or that the Court, in the alternative, grant a summary judgment for the defendants ordering the said Bill of Complaints dismissed with prejudice, for the following reasons:

1. That as appears from the sworn answer filed by these defendants in the above entitled cause, the defendants are the vendors under agreements of sale of certain apartment units in an apartment house building to purchasers thereof, and that there is no relationship of landlord and tenant between these defendants and such purchasers.

2. That the persons described in plaintiff's Schedule "A," attached to the Bill of Complaint filed in the above cause, are purchasers of apartments in the said building, and that there is no relationship of landlord and tenant between the persons mentioned in the said schedule and these defendants.

3. That the Court has no jurisdiction over the subject matter.

4. That the Bill of Complaint in the above cause fails to state a claim upon which relief can be granted.

5. That there is no issue as to any material fact involved.

6. That the said Housing and Rent Act of 1947, as amended, is unconstitutional and void and that Section

825.8 of the Controlled Housing Rent Regulations, under which the plaintiff purports to base its cause of action against these defendants, is unlawful and unconstitutional as it relates to the subject matter in this action and is an improper exercise by the Housing Expediter of his rule making power under the so-called Rent Control Act of 1947, as amended.

This motion is based upon the files and records in this cause and upon the affidavits of Dwight M. Hurlbut and David A. Hersh, which are hereto attached.

Jeffries & Hersh,
Attorneys for Defendants
312 Maccabees Building
Detroit 2, Michigan
Te. 1-1230

State of Michigan, County of Wayne, ss:

Dwight M. Hurlbut being first duly sworn, deposes and says that he is a resident of the City of Detroit and is employed by the defendant, Donald B. Neal, in the capacity of bookkeeper, and has been employed by him since prior to January 1, 1949, that he has possession and full charge of the books, records and purchase contracts pertaining to the sale of apartment units located in the premises known as 2716 Third Street, Detroit, Michigan, and that he has full knowledge of the matters pertaining to the operation of the said apartment.

Your deponent further states it to be a fact of his own knowledge that more than 65% of the apartment units located in the said premises had been sold to purchasers thereof under written agreements of purchase, and occupancy of the apartments either made available to the said

purchasers or that said purchasers did actually occupy the premises purchased by them prior to September 1, 1949.

Further, deponent sayeth not.

Dwight M. Hurlbut

Subscribed and sworn to before me this
23rd day of November, A. D. 1949.

Dorothy J. Borthwick,
Notary Public, Wayne County, Michigan
My Commission expires: May 12, 1950

State of Michigan, County of Wayne, ss:

David A. Hersh, being first duly sworn, deposes and says that he is a resident of the City of Detroit and is one of the members of the firm of Jeffries & Hersh, and that he has full and complete knowledge of all matters pertaining to the subject matter of litigation in the instant cause.

Deponent further states that the persons mentioned in Schedule "A" attached to plaintiff's Bill of Complaint in the above cause do not bear the relationship of tenant with the defendants, that on the contrary, such persons are purchasers under contract of purchase of apartment units in the apartment building located at 2716 Third Street, Detroit, Michigan, under a contract of purchase as more particularly set forth in the sworn answer filed by the defendants in the above entitled cause.

Further, deponent sayeth not.

David A. Hersh.

Subscribed and sworn to before me this
23rd day of November, A. D. 1949.

Dorothy J. Borthwick,
Notary Public, Wayne County, Michigan
My Commission expires: May 12, 1950

ORDER GRANTING MOTIONS FOR SUMMARY JUDGMENT

At a session of said court held in the Federal Building, Detroit, Michigan on February 6, 1950.

Present: Honorable Arthur F. Lederle, United States District Judge.

The Court having duly considered defendant's motion for summary judgment filed in each of the above entitled cases on November 28, 1949,

It is hereby ordered, that the motion for summary judgment in each case be and the same is hereby granted and each case is hereby dismissed.

Arthur F. Lederle,
District Judge.

APPENDIX D

HOUSING AND RENT ACT OF 1947, AS AMENDED
(50 U. S. C. A. 1881 et seq.)

Sec. 209(a). No action or proceeding to recover possession of any controlled housing accommodations with respect to which a maximum rent is in effect under this title shall be maintainable by any landlord against any tenant in any court, notwithstanding the fact that the tenant has no lease or that his lease has expired, so long as the tenant continues to pay the rent to which the landlord is entitled unless—

(1) Under the law of the State in which the action or proceeding is brought the tenant is (A) violating the obligation of his tenancy (other than an obligation to pay rent higher than rent permitted under this Act or an obligation to surrender possession of such housing accommodations) or (B) is committing a nuisance in such housing accommodations or using such housing accommodations for an immoral or illegal purpose or for other than living or dwelling purposes;

(2) The landlord seeks in good faith to recover possession of such housing accommodations for his immediate and personal use and occupancy as housing accommodations;

(3) The landlord has in good faith contracted in writing to sell the housing accommodations to a purchaser for the immediate and personal use and occupancy as housing accommodations by such purchaser;

(4) The landlord seeks in good faith to recover possession of such housing accommodations (A) for the immediate purpose of substantially altering or remodeling the same for continued use as housing accommodations, or for the immediate purpose of conversion into additional housing accommodations, and the altering, remodeling, or

conversion cannot practically be done with the tenant in occupancy, and the landlord has obtained such approval as may be required by Federal, State, or local law for the alterations, remodeling, or any conversion planned, or (B) for the immediate purpose of demolishing such housing accommodations;

(5) The landlord seeks in good faith to recover possession of such housing accommodations for the immediate purpose of withdrawing such housing accommodations from the rental market, and such housing accommodations shall not thereafter be offered for rent as such; or

(6) The housing accommodations have been acquired by a State or any political subdivision thereof for the purpose of making a public improvement and are rented temporarily pending the construction of such improvement.

(b) "Notwithstanding any other provision of this Act, the United States or any other State or local public agency may maintain an action or proceeding to recover possession of any housing accommodations operated by it where such action or proceeding is authorized by the statute or regulations under which such accommodations are administered; Provided, That nothing in this subsection shall be deemed to authorize the maintenance of any such action or proceeding upon the ground that the income of the occupants of the housing accommodations exceeds the allowable maximum unless such income, less any amounts paid to such occupants by the Veterans' Administration on account of service-connected disability or disabilities, exceeds the allowable maximum."

(c) "No tenant shall be obliged to surrender possession of any housing accommodations pursuant to the provisions of paragraph (2), (3), (4), (5), or (6) of subsection (a) until the expiration of at least sixty days after written notice from the landlord that he desires to recover possession of such housing accommodations for one of the purposes specified in such paragraphs."

APPENDIX E

FINAL ORDER
(Filed May 23, 1950)

This cause came on to be heard by the Court on the pleadings, evidence, testimony, and statements of counsel. Sanford S. Simms appeared for the plaintiff and the defendant appeared in person. The Court having heard the evidence and arguments of counsel and being sufficiently advised in the premises, now, pursuant to Rule 52 of the Rules of Civil Procedure, signs and files herein its findings of fact and conclusions of law, which said findings of fact and conclusions of law are ordered by the Court filed and made a part of the record in this cause, all of which is now done.

Upon the foregoing Findings of Fact and Conclusions of Law, it is now,

Ordered, adjudged, and decreed that the defendant, Orin C. Clement, pay the sum of $1,848.00 to the Treasurer of the United States, c/o Office of the Housing Expediter, 1510 Euclid Avenue, Cleveland 15, Ohio, for the use and benefit of the following named persons, who shall receive the respective amounts set forth:

Kenneth L. Cann	$316.00
Mrs. Margaret Young	4.00
Bruce J. Rummel	39.00
Mrs. Jessie S. Eastell	210.00
Andrew Rometski	301.00
George Sfaelos	296.00
John Allen Coxon	368.00
John Duffy	314.00

It is further ordered, adjudged, and decreed that the defendant, Orin C. Clement, his agents, servants, employees, and all persons in active concert or participation with defendant be and they are hereby enjoined from:

(a) Soliciting, demanding, accepting or receiving any rent in excess of the maximum rent prescribed by the Controlled Housing Rent Regulation as heretofore or hereafter amended or in excess of the maximum rent permitted by any other Regulation or Order heretofore or hereafter adopted pursuant to the Housing and Rent Act of 1947, as heretofore or hereafter amended or extended or superseded; and said Order shall apply to the housing accommodations involved in this action and to any other controlled housing accommodations now or hereafter owned, managed or operated by defendant.

(b) Committing any other violation of the said Act or Regulation or as it may be amended, extended or superseded.

Judgment is hereby entered against the defendant for the costs of this action.

Dated: May 29, 1950.

Frank L. Kloeb,
Judge, United State District Court

Sanford S. Simms,
Enforcement Attorney.
Of Counsel for Plaintiff.

Office - Supreme Court, U.
FILED
JAN 14 1952
CHARLES ELMORE CROPLE
CLERK

IN THE

Supreme Court of the United States

No. 532

ORIN C. CLEMENT,

Petitioner,

vs.

TIGHE E. WOODS, HOUSING EXPEDITER,
OFFICE OF HOUSING EXPEDITER,

Respondent.

Petition for a Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

MOTION OF PETITIONER TO USE FORMER RECORD

ORIN C. CLEMENT,
302 Columbia St.,
Toledo, Ohio.

IN THE

Supreme Court of the United States

No. .....

ORIN C. CLEMENT,

Petitioner,

vs.

TIGHE E. WOODS, HOUSING EXPEDITER,
OFFICE OF HOUSING EXPEDITER,

Respondent.

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

Your petitioner, Orin C. Clement, respectfully moves this Honorable Court for permission to use with his petition for a writ of *certiorari* to the United States Court of Appeals for the Sixth Circuit, filed concurrently herewith, the copies of the record on file with the petition for a writ of *certiorari* on the appeal from the interlocutory order, being No. 525, October Term, 1949, in this Court.

ORIN C. CLEMENT,
Petitioner, per se.

MEMORANDUM

Your petitioner represents that on the trial on the merits in this cause No. 6083 in the United States District Court for the Northern District of Ohio, Western Division, the plaintiff (Respondent) stood on the record of the proceedings on the hearing of the motion for a preliminary injunction and introduced no additional testimony. The complete record of the proceedings on the trial on the merits which was filed on appeal in the United States Court of Appeals for the Sixth Circuit, together with the proceedings in the Court of Appeals, is filed with the petition for a writ of *certiorari* but it does not include the record of the proceeding on the application for a preliminary injunction. Altogether, with the copies of the record on file with the petition in cause No. 525, October Term, 1949, and with extra copies in petitioner's possession, there are, it seems, a sufficient number of copies without going to the expense of printing additional copies, if the Court consents that these copies may be used as a part of the record with this petition.

ORIN C. CLEMENT,

Petitioner, per se.

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In the Supreme Court of the United States

OCTOBER TERM, 1951

No. 532

ORIN C. CLEMENT, *Petitioner*

v.

TIGHE E. WOODS, Housing Expediter,
Office of the Housing Expediter

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

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BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINIONS BELOW

The district court's oral opinion (2d R. 94-97) which is not reported, incorporates its prior opinion contained at pages 54 to 69 in the transcript of record in No. 525, October Term, 1949.[1] The opin-

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[1] Petitioner's designation of record in this Court (R. 177) includes the printed record on appeal which was before this Court in No. 525, October Term, 1949. To conform with petitioner's designation, references to the old record will be designated as "1st R., while reference to the present record will be designated "2d R.".

ion of the Court of Appeals, appearing in its judgment (2d R. 165), is published in 191 F. 2d 855.

JURISDICTION

The judgment of the Court of Appeals was entered on October 16, 1951 (2d R. 165). Rehearing was denied on November 19, 1951 (2d R. 175). The petition for a writ of certiorari was filed on January 14, 1952. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

Whether the court below properly sustained the district court's findings of fact (1) that petitioner's alleged "contracts of sale" of housing accommodations owned by him were not entered into in good faith, and (2) that petitioner charged his tenants rentals in excess of the maximum rentals established by the Housing and Rent Act and the Rent Regulation.

STATUTE AND REGULATIONS INVOLVED

The pertinent provisions of the Housing and Rent Act of 1947, as amended (50 U.S.C. App., Supp. IV, 1881 *et seq.*), and the Controlled Housing Rent Regulation (12 F.R. 4331) are set forth in the Appendix, *infra,* pp. 12-15.

STATEMENT

Petitioner is the owner of housing accommodations located in Toledo, Ohio. This action was brought by the Housing Expediter to enjoin peti-

tioner, pursuant to Section 206(b) of the Housing and Rent Act of 1947, as amended, from violating the Act and for restitution of alleged overcharges (1st R. 2-5). Simultaneously with the filing of the complaint, the Housing Expediter applied for a temporary injunction restraining petitioner from collecting rent in excess of the maximum rent established by the Act and the regulations, and from violating the Act in any other manner (1st R. 6-9). Petitioner's answer denied the charges of violation; asserted the court lacked jurisdiction; and claimed in substance that he was not renting the housing accommodations involved herein, but rather had sold them, and that the persons who presently occupied them did so under "contracts of purchase" (1st R. 10-15).

The application for a temporary injunction came on for hearing before the District Court. At this hearing, the Housing Expediter offered the testimony of six of the alleged purchasers (1st R. 23-53), summarized in part in the opinion of the District Court (1st R. 63-64). Petitioner did not take the stand nor call witnesses in his behalf, but cross-examined plaintiff's witnesses. At the conclusion of the hearing, the trial court held "that the contracts entered into were not entered into in good faith by the [defendant]" but "were entered into for the purpose of receiving a $200 down payment wholly above and beyond the rental ceilings provided, and of receiving thereafter monthly pay-

ments wholly above and beyond the fixed rental ceilings * * * in violation of the law" (1st R. 65-66).

The court entered findings of fact and conclusions of law (1st R. 76-78), in which it found that petitioner was the landlord of the housing accommodations in question, situated in the Toledo, Ohio, Defense-Rental Area (Paragraphs 5-6, (1st R. 76); that petitioner had entered into contracts of sale with six different persons involved in the case, "all of which contracts were not entered into in good faith" (Paragraph 7, 1st R. 77); that the persons named, except one George Sfaelos, were personally occupying the accommodations as tenants, and the monthly payments being made by them to petitioner constituted rent (Paragraph 8, 1st R. 77); that petitioner had violated the Act and Section 825.8 of the Controlled Housing Rent Regulation, its evasion provisions (Paragraph 9, 1st R. 77); and that he had received and was receiving money from the several tenants named in excess of the maximum legal rent allowed by the Act and the Rent Regulation (Paragraph 11, 1st R. 77). Based upon these findings, the court likewise concluded that it had jurisdiction of the parties and of the subject matter (Paragraph 1, 1st R. 77); that the Act prohibited collection of rent in excess of the maximum rents (Paragraph 2, 1st R. 78); and that petitioner should be temporarily enjoined from receiving unlawful rents and from

adopting any scheme for evading the Act and the Rent Regulation. The District Court thereupon entered an order for a preliminary injunction to that effect (1st R. 79).

Upon appeal, the Court of Appeals affirmed upon the ground that the findings of fact of the District Court "are amply sustained by the record, and that the discretion of the District Court was not improvidently exercised in the issuance of the temporary injunction complained of" (1st R. 89). Petition for a writ of certiorari was denied (No. 525, October Term, 1949, 339 U.S. 911).

Upon the trial on the merits, respondent stood on the record of the proceedings on the hearing of the application for the preliminary injunction, and introduced no additional evidence (2d R. 17). Petitioner was furnished an opportunity to cross examine the witnesses who had testified previously at the hearing for a preliminary injunction (2d R. 22-30, 31-35, 36-40, 41-42). At the conclusion of the trial, the district court again concluded that the contracts entered into by petitioner constituted an evasion of the Act and Rent Regulation (2d R. 95-97). The court entered findings of fact and conclusions of law substantially similar to those entered after the hearing for a preliminary injunction. Among other findings of fact, the court found that petitioner "was, at all times material hereto, the landlord" of the housing accommodations involved in the suit (Finding of Fact 6, 2d R. 119);

that petitioner entered into contracts of sale with six different named persons "all of which contracts were not entered into in good faith" (Finding of Fact 7, 2d R. 120); that petitioner received rent from six tenants in the various apartments involved in excess of the maximum legal rent (Finding of Fact 9 to 17, 2d R. 120-122); that petitioner violated the provisions of the Act and Regulation; and that the total rental overcharges amounted to $1848.00 (Finding of Fact 18, 2d R. 122). The district court concluded that respondent had sustained its action by necessary proof and was entitled to an order of restitution in amount of $1848.00 and a permanent injunction (2d R. 123). Consistent with these findings and conclusions of law, the district court entered a final order directing petitioner to make restitution to tenants of the rental overcharges in amount of $1848.00 and restraining further violation (2d R. 124-125). Upon appeal, the court below again affirmed upon the ground that "the findings of fact filed by the district court are abundantly supported by substantial evidence in the record and that the conclusions of law applicable to the facts are correctly drawn by the district court" (2d R. 165).

ARGUMENT

The petition filed in this case is little more than a restatement of that filed by petitioner in 1950, and denied by this Court in that year. 339 U.S. 911.

Since then, nothing has happened which calls for any different disposition of this petition.

1. Section 204(d) of the Housing and Rent Act of 1947 (Appendix, *infra*, p. 13) authorized the issuance of regulations and orders deemed necessary to carry out the provisions of the Act. Pursuant to this section, the Housing Expediter issued the Rent Regulation, which, among other things, declared that maximum rents shall not be evaded either directly or indirectly "by way of absolute or conditional sale, sale with purchase money or other form of mortgage, or sale with option to repurchase * * * or by tying agreement, or otherwise" (Sec. 825.8(a), Appendix, *infra*, p. 15). This action was brought under Section 206(b) of the Act (Appendix, *infra*, pp. 14-15) to prevent an evasion of the sort described in the Regulation.

The main question before the district court was one of fact, viz: were the alleged contracts of sale employed by petitioner merely a device to evade the maximum rent provisions of the Act and the Regulation. After incorporating its prior comprehensive opinion (2d R. 94) which carefully reviewed the contract of sale and the testimony in the case (1st R. 54-69), the court found as a fact that petitioner's contracts "were not entered into in good faith;" that petitioner was actually the landlord of the premises in question; that the persons named were occupying the accommodations as tenants; that the monthly payments being made by

them to petitioner constituted rent; and that petitioner had violated the Act and Regulation in receiving from the tenants money in excess of the maximum legal rent (2d R. 119-122). Petitioner concedes that "there is no dispute in the" evidence (Pet. 15), and the Court of Appeals held that the findings of fact of the District Court are "abundantly supported by substantial evidence in the record" (2d R. 165).[2] These findings of fact by the district court, concurred in by the court of appeals, are normally unassailable here. *Virginia Ry.* v. *Federation,* 300 U.S. 515; *Alabama Power Company* v. *Ickes,* 302 U.S. 464, 477; *United States* v. *O'Donnell,* 303 U.S. 501; *Allen* v. *Trust Co.,* 326 U.S. 630; *Comstock* v. *Group of Investors,* 335 U.S. 211, 213-214.

Even if, as petitioner would have it, this case raises a question of law, the principle applicable to the facts as found is so well settled as not to require restatement by this Court: "Mere words and ingenuity of contractual expression, whatever their effect between the parties, cannot by description make permissible a course of conduct forbidden by law." *United States* v. *San Francisco,* 310 U.S. 16, 28; see, too, *United States* v. *Masonite Corp.,* 316 U.S. 265, 281.

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[2] Petitioner advertised the housing accommodations in a newspaper under the heading "Apartments for Rent Unfurnished" (1st R. 24, 55), and the Trial Court's opinion details the factors supporting his conclusion that that classification was, for all practical purposes, accurate. See 1st R. 54-69.

2. Though petitioner contends (Pet. 17-19) that the written contracts for the sale of units in petitioner's apartment building conform to the laws of Ohio, and were enforceable contracts for a fee interest in real estate in Ohio, he cites no case so holding in circumstances comparable to those at bar. In any event, while the incidents of title may be governed by state law, the meaning and application of the Housing and Rent Act and the regulations issued thereunder are controlled by federal law. *Schwabacher* v. *United States,* 334 U.S. 182, 188-189; *National Labor Relations Board* v. *Hearst Publications,* 322 U.S. 111, 123; *Case* v. *Bowles,* 327 U.S. 92; *Woods* v. *Petchell,* 175 F. 2d 202 (C.A. 8); *Woods* v. *Krizan,* 176 F. 2d 667 (C.A. 8). The Congressional purpose to control rentals is not to be frustrated by the varying technical niceties of local real estate law.

3. There is no basis whatever for petitioner's assertion (Pet. 4, 22) that the decision below conflicts with the decision of the Court of Appeals for the Eighth Circuit in *Woods* v. *Malcolm-Dallyn,* 177 F. 2d 414. In that case the Court of Appeals for the Eighth Circuit simply dismissed an appeal as moot in circumstances so different from those at bar as not to be worthy of discussion.

4. Petitioner contends that if the Rent Regulation can be construed to mean that contracts for

the sale of controlled housing units legal and enforcible on their face, constitute evasion of the Act and the regulations, it is "a direct infringement upon the unalienable right to dispose of property in the modes provided by local law contrary to Constitutional provisions and the Bill of Rights" (Pet. 26). But it is plain that no constitutional rights were offended in this case. If, as the trial court found, the proposed sales of housing accommodations were, in fact, rentals of housing accommodations, then petitioner, like other landlords subject to the Act, could charge no more than the lawful rental for the accommodations. Prohibitions of the evasion of this duty are clearly valid, and follow from the lawfulness of the maximum rent restriction upon the use of rental property in a period of emergency. (*Woods* v. *Miller Co.*, 333 U.S. 138; *United States* v. *Shoreline Cooperative Apartments, Inc.*, 338 U.S. 897, rehearing denied, 338 U.S. 939; *Bowles* v. *Willingham*, 321 U.S. 503).

CONCLUSION

The decision of the court below is clearly right. There is no conflict of decisions and further review is not warranted. The petition for a writ of certiorari should, therefore, be denied.

Respectfully submitted,

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FEBRUARY, 1952.

APPENDIX

1. The pertinent provisions of the Housing and Rent Act of 1947, 61 Stat. 193, as amended by the Act of February 27, 1948, 62 Stat. 37; the Act of March 30, 1948, 62 Stat. 93; the Act of March 30, 1949, 63 Stat. 18; and Public Law 574, 81st Cong., 2d Sess., approved June 23, 1950; 50 U.S.C. App., Supp. IV, 1881 *et seq.*[3]

* * * * *

SEC. 204. (a) The Housing Expediter shall administer the powers, functions, and duties under this title; and for the purpose of exercising such powers, functions, and duties, and the powers, functions, and duties granted to or imposed upon the Housing Expediter by title I of this Act, the Office of Housing Expediter is hereby extended until the close of June 30, 1950.

(b) (1) Subject to the provisions of paragraphs (2) and (3) of this subsection, and subsections (h)

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[3] Besides making other amendments not here material, Congress, by amendment to the Housing and Rent Act in 1951 (Pub. L. No. 96 82d Cong. 1st sess., approved July 31, 1951), conferred upon the President all powers, duties, and responsibilities for the administration of the Act. The President terminated the Office of the Housing Expediter (Exec. Order 10,276, 16 F. R. 7535) and, by successive delegations, the authority to institute, maintain, and defend civil proceedings in any court, including proceedings pending on the date of the Order, was vested in the Office of Rent Stabilization (Exec. Order 10,276, 16 F. R. 7535; Economic Stabilization Agency Gen. Order 9, 16 F. R. 7630). The respondent, Tighe E. Woods, is director of the Office of Rent Stabilization.

and (i), during the period beginning on the effective date of this title and ending on the date this title ceases to be in effect, no person shall demand, accept, or receive any rent for the use or occupancy of any controlled housing accommodations greater than the maximum rent established under the authority of the Emergency Price Control Act of 1942, as amended, and in effect with respect thereto on June 30, 1947: * * *

(d) The Housing Expediter is authorized to issue such regulations and orders, consistent with the provisions of this title, as he may deem necessary to carry out the provisions of this section and section 202 (c).

* * * * *

SEC. 206.[4] (a). It shall be unlawful for any per-

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[4] This section was amended by section 205 of the Act of March 30, 1949, 63 Stat. 18, to read as provided above. Prior to such amendment and as amended by section 203 of the Act of March 30, 1948, 62 Stat. 93, this section read as follows:

"SEC. 206. (a) It shall be unlawful for any person to offer, solicit, demand, accept, or receive any rent for the use or occupancy of any controlled housing accommodations in excess of the maximum rent prescribed under section 204 or otherwise to do or omit to do any act in violation of any provision of this title.

"(b) Whenever in the judgment of the Housing Expediter any person has engaged or is about to engage in any act or practice which constitutes or will constitute a violation of any provision of this title, he may make application to any Federal, State, or Territorial court of competent jurisdiction, for an order enjoining such act or practice, or for an order enforcing compliance with such provision, and upon a showing by the

son to demand, accept or receive any rent for the use or occupancy of any controlled housing accommodations in excess of the maximum rent prescribed under section 204, or otherwise to do or omit to do any act, in violation of this Act, or of any regulation or order or requirement under this Act, or to offer, solicit, attempt, or agree to do any of the foregoing.

(b) Whenever in the judgment of the Housing Expediter any person has engaged or is about to engage in any acts or practices which constitute or will constitute a violation of any provision of this Act, or any regulation or order issued thereunder, the United States may make application to

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Housing Expeditor that such person has engaged or is about to engage in any such act or practice a permanent or temporary injunction, restraining order, or other order shall be granted without bond."

The original section read as follows:

"SEC. 206. (a) It shall be unlawful for any person to offer, solicit, demand, accept, or receive any rent for the use or occupancy of any controlled housing accommodations in excess of the maximum rent prescribed under section 204.

"(b) Whenever in the judgment of the Housing Expediter any person has engaged or is about to engage in any act or practice which constitutes or will constitute a violation of subsection (a) of this section, he may make application to any Federal, State or Territorial court of competent jurisdiction, for an order enjoining such act or practice, or for an order enforcing compliance with such subsection, and upon a showing by the Housing Expediter that such person has engaged or is about to engage in any such act or practice a permanent or temporary injunction, restraining order, or other order shall be granted without bond."

any Federal, State, or Territorial court of competent jurisdiction for an order enjoining such acts or practices, or for an order enforcing compliance with such provision, and upon a showing that such person has engaged or is about to engage in any such acts or practices a permanent or temporary injunction, restraining order, or other order shall be granted without bond

* * * * *

SEC. 302. Nothing in this Act or in the Housing and Rent Act of 1947, as amended, shall be construed to require any person to offer any housing accommodations for rent.

2. Section 825.8(a) of the Housing Expediter's Controlled Housing Rent Regulation (12 F.R. 4331) provides as follows:

SEC. 8. *Evasion*—(a) *General.* The maximum rents and other requirements provided in this regulation shall not be evaded, either directly or indirectly, in connection with the renting or leasing or the transfer of a lease of housing accommodations, by way of absolute or conditional sale, sale with purchase money or other form of mortgage, or sale with option to repurchase or by modification of the practices relating to payment of commissions or other charges or by modification of the services furnished with housing, or by tying agreement, or otherwise.

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